



6116-01 M

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 203

RIN 0412-AA91

Streamlining the Registration Process for Private Voluntary Organizations

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: USAID is issuing a final rule to rescind the Agency's rules to streamline the registration process for Private Voluntary Organizations (PVOs). Foreign assistance has evolved since the establishment of the requirement that PVOs register with USAID, and a careful review of the Agency's business practices has concluded that there is no longer a need for the current, time-consuming and costly Agency-wide process. The remaining USAID programs required by statute to register PVOs as a condition of eligibility have incorporated a simplified registration process into each of their applications for funding. USAID published the proposed rule and has determined to adopt a final rule to support streamlining the PVO registration process.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Daniel Grant, Telephone: (202) 712-0497 or e-mail: dgrant@usaid.gov

SUPPLEMENTARY INFORMATION: On February 12, 2019 (84 FR 3351), USAID issued a proposed rule to rescind part 203 of title 22 of the Code of Federal Regulations (CFR) (22 CFR part 203) to streamline the registration process for PVOs. Effective upon the publication of this final rule, PVOs would no longer be required to register with USAID to compete for funding, with the exception of organizations that apply for the Limited Excess-Property Program (LEPP), the Ocean-Freight Reimbursement Program (OFR), or to other Federal Departments and Agencies under Section 607(a) of the Foreign Assistance Act (FAA). Applicants to the LEPP, the OFR, and for assistance under Section 607(a) of the FAA must complete and submit to USAID a self-certification form to indicate they qualify as a PVO. The self-certification form, which an authorized representative of the applicant organization must sign, requires that a PVO confirm whether it is registered as a U.S.-based organization or an international PVO. Rescission of 22 CFR part 203 is expected to reduce the burden on the public significantly; produce a total estimated annual cost savings of \$779,406 to USAID; and offer significant savings for the PVO community, projected to range from approximately \$2 million to \$11 million per year.

A. Discussion of Comments

USAID received one set of comments from an individual in response to the proposed rule. A discussion of these comments follows:

The commenter sought clarification on the rule and the rulemaking process, in addition to the laws associated with the registration of PVOs. The three USAID programs that require registration because of statute are the LEPP, the OFR, and applications to other

U.S. Government Departments and Agencies that seek to provide foreign assistance in accordance with Section 607(a) of the FAA. The statute is silent on the methodology for registration. While 22 CFR part 203 details a specific process, USAID has determined it is duplicative of pre-award assessments and due-diligence requirements the Agency already undertakes with all prospective awardees. Maintaining both sets of requirements imposes a significant cost burden on PVOs (and PVOs only) to obtain and maintain registration, a process largely duplicated if a PVO is considered for an award. Replacing 22 CFR part 203 with a legally compliant, simplified self-certification would streamline the process significantly. USAID is updating this process not because of changes in law or new legal requirements, but to reduce costs and eliminate unnecessary regulation. Only PVOs participating in the three specific programs mentioned above would have to self-certify, and the Bureaus and Independent Offices within USAID that manage these programs would provide guidance as necessary as part of implementing them. Maintenance of a PVO registry is not necessary to implement these programs. In addition, no law requires maintaining a database of PVOs, which is duplicative of the role private rating organizations now play. While different from the focus of the PVO-registration program, initially established to help achieve USAID's international-development mission, private rating organizations offer the transparency on service organizations that the PVO-registration process had also provided, although that was not the purpose of USAID's PVO-registration program.

USAID published the proposed rule on February 12, 2019, and issuance of this final rule serves as USAID's notification to, and request for, input from the public on the streamlined registration process for PVOs.

B. Background.

USAID is issuing this final rule to rescind 22 CFR part 203, which codified the rules for PVO registration with USAID and provided the registration process for PVOs, including the conditions for registration and documentation required to be submitted to USAID to complete a registration, as well as detailing the annual renewals and termination processes.

USAID has rescinded 22 CFR part 203 because the process to register PVOs is no longer needed for the majority of programs open to PVOs across the Agency. Therefore, the Agency has streamlined it to apply only to programs that require registration by statute (LEPP, OFR, and applications to other U.S. Government Departments and Agencies that seek to provide foreign assistance in accordance with Section 607(a) of the FAA). Combined, these programs serve fewer than 50 organizations.

USAID initially established its process to register PVOs to ensure an organization met the definition of a PVO and specific organizational standards. Today, USAID examines all potential partner organizations, PVOs or otherwise, via a pre-award assessment managed by warranted USAID Agreement/Contract Officers in accordance with Agency policy (Automated Directives System [ADS] Chapter 303: Grants and Cooperative Agreements to Non-Governmental Organizations; and ADS Chapter 302: USAID Direct Contracting), and as required by relevant regulations (*i.e.*, 2 CFR 200.205

for assistance, and 48 CFR part 9 for contracts). The due-diligence process for registering PVOs under 22 CFR part 203 is duplicative of these pre-award assessments, and organizations spend a substantial amount of time and money to obtain and maintain registration. Finally, USAID's PVO registration has historically played the role that private rating organizations now play—publishing data on PVOs and other types of non-governmental organizations. The extensive information publicly available through other providers has eliminated the Agency's need to produce information on the sector through the maintenance and publication of a registry.

C. Impact assessment.

1) Executive Orders (E.O.) 12866 and 13563 - Regulatory Planning and Review.

Under E.O. 12866, USAID must determine whether a regulatory action is “significant” and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that 22 CFR part 203 is not an “economically significant regulatory action” under Section 3(f)(1) of E.O. 12866. This final rule is not a major rule under Section 804 of Title 5 of the United States Code (U.S.C.).

E.O.s 12866 and 13563 direct Federal Departments and Agencies to assess all the costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Streamlining the duplicative Agency-wide

registration program would eliminate thousands of labor hours and save hundreds of thousands of dollars for USAID and the estimated 550 PVOs currently registered with the Agency.

USAID uses a contractor to manage the PVO-registration process, which costs the Agency approximately \$700,000 per year. In addition, internal USAID annual labor costs related to the registration process amount to \$79,406 in burdened salary and benefit expenses (50 percent of a General Schedule [GS]-13 Full-Time Equivalent [FTE]). With this deregulation, USAID anticipates saving \$779,406 in Federal Government costs per year.

Moreover, USAID estimates that the deregulation would generate significant cost-savings for affected PVOs. USAID recently surveyed all 550 PVO registrants to quantify the burden associated with the registration process. Within the past ten years, the number of PVOs registered with USAID on an annual basis has been consistent, ranging from 550 to 553 PVOs per year. Based on the results of the survey, USAID estimates that all 550 PVO registrants spent a total of 4,378 hours per year to prepare and file the registration forms.

Using market research, USAID estimates that the burdened labor cost for PVO staff to conduct tasks related to registration ranges from \$40 to \$80 per hour.¹ Applying those rates to the total 4,378 personnel hours yields an estimated cost that ranges from \$175,120 to \$350,240 for PVO staff to register.

¹ Calculated based on nationwide data on nonprofit program manager salaries (https://www.glassdoor.com/Salaries/nonprofit-program-manager-salary-SRCH_KO0,25.htm), with employee benefit costs added into the hourly rates (<https://www.bls.gov/news.release/ecec.nr0.htm>).

In addition, with rescission of the rule, USAID concludes that PVOs would achieve significant further cost-savings, because a component of the registration process is the requirement to conduct an external financial audit. USAID estimated the total number of external audits conducted only for the purposes of registering as a PVO, but not used because the organization did not receive an award from USAID, range from 183 to 367. Based on market research,² past experience, and consultations with registered PVOs, the average cost of an independent audit ranges from \$10,000 to \$30,000. USAID then calculated a low estimate and high estimate of cost-savings. For the high estimate, USAID applied the rate of \$30,000 to 367 registrants (two-thirds of the 550 total registrants) that do not receive an award. This yields an annual total of \$11,010,000 in “unfruitful” expenses avoided. For the low estimate, we applied the \$10,000 rate as the audit cost, and added the assumption that half of registrants without awards would have procured financial audits even in the absence of the rule. Multiplying \$10,000 by 183 (one-third of the 550 total registrants) yields a total of \$1,830,000 for our low-cost estimate of cost-savings associated with avoided audit expenses. When estimates for PVO staff time and financial audits are combined, the cost savings for affected PVOs ranges from \$2,005,120 to \$11,360,240. When added to the expected costs internal to USAID of \$779,406, the annual total of incremental cost savings as a result of the rescission ranges from \$2,784,526 to \$12,139,646. Therefore, the rescission of our PVO-registration rule would benefit USAID and our PVOs by streamlining processes and achieving significant cost-savings.

² <https://www.councilofnonprofits.org/nonprofit-audit-guide/what-is-independent-audit>, <http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf>

2. Executive Order (E.O) 13771.

This rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost-savings of this rule appear in the rule's economic analysis.

3. Regulatory Flexibility Act.

Because the rescission of this regulation removes, rather than imposes, the collection of information, USAID certifies that the rescission would not have a significant economic impact on a substantial number of small entities.

4. Paperwork Reduction Act (PRA).

The Paperwork Reduction Act (44 U.S.C. 3507) applies to this rule, because it removes information-collection requirements formerly approved by OMB. Rescission of this rule would reduce paperwork significantly and eliminate information-collection requirements on the 550 PVOs that currently register with the Agency. USAID collects information from all registered PVOs as part of the registration requirement, such as financial data and a costly external financial audit, to determine whether the PVO meets the conditions of registration. Under the revised approach, only organizations that apply for the Agency's LEPP or OFR, or to other U.S. Government Departments and Agencies that seek to provide foreign assistance (about 50 organizations in total) would have to certify they meet USAID's PVO requirements through the new, streamlined certification process described earlier. USAID would not collect any other data or demand extra financial audits from these organizations.

USAID previously collected information for to register PVOs under the OMB-approved AID Form 1550-2 (OMB Approval Number 0412-0035), but inadvertently operated in non-compliance with the PRA when OMB approval of this form expired, and USAID did not seek extension of the OMB approval when the Agency moved to an on-line system for PVO registration. USAID's online PVO-registration system required that PVOs provide the same information requested on AID Form 1550-2, including financial data. As such, the public-reporting burden for collection of information remained the same under the on-line system.

5. Administrative Procedures Act.

USAID is issuing this deregulatory action to remove an unneeded hurdle to doing business with the Agency that imposes unnecessary and excessive costs on the private sector with no value to the Government. The rescinded rule originally called for the collection of information, such as a company's make-up of volunteers—since obviated once statutory changes removed the volunteer requirement. Apart from that requirement, statutory references to the registration of PVOs (such as those in Sections 123 or 607 of the FAA) provide no further guidance or requirements to the Agency on what such registration should entail. By rescinding this rule, the Agency would be free to simplify and streamline registration to remove barriers that impose expenses on smaller organizations that wish to compete for USAID funds.

USAID also conducted surveys of the primary stakeholders to the registration process—that of Agency's internal stakeholders and the PVO community. Surveys of registered PVOs in 2012 and 2017 showed that the PVO community did not see

significant value in the registration program delineated by 22 CFR part 203, and internal stakeholders for the Agency determined that the information collected in accordance with 22 CFR 203 served no purpose for the Agency. These findings contributed to the decision to remove both the registration program and the rule that required such a rigorous registration process. Additionally, USAID does not plan to replace the current rule with any other.

For the LEPP, the OFR, and PVOs that apply to other U.S. Government Departments and Agencies that are seeking to provide foreign assistance under Section 607(a) of the FAA, all of which still require registration because of legislative requirements, as provided above, the Agency has developed a simplified registration process as part of the application process.

List of Subjects for 22 CFR Part 203

Foreign aid, Nonprofit organizations, Reporting and recordkeeping requirements.

PART 203—[REMOVED]

For the reasons discussed in the preamble, and under the authority of Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435, USAID removes 22 CFR part 203.

Carrie Thompson,

Acting Assistant Administrator, Bureau for Economic Growth, Education, and the Environment.

[FR Doc. 2019-15685 Filed: 7/30/2019 8:45 am; Publication Date: 7/31/2019]